UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,079	12/06/2001	Dwip N. Banerjee	AUS920010870	8825

7590	12/09/2005	**EXAMINER**

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EXAMINER
LAZARO, DAVID R

ART UNIT	PAPER NUMBER
2155	

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>06 December 2001</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1-20 are pending in this office action.

Specification

2.   Please provide the missing serial numbers for related co-pending applications.

Double Patenting

3.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4.   Claims 1, 6, 11 and 16 are rejected on the ground of nonstatutory obviousness-

type double patenting as being unpatentable over claims 1-28 of U.S. Patent No.

6,915,456 ('456). Although the conflicting claims are not identical, they are not

patentably distinct from each other. The examiner interprets the claim language of the

instant application regarding "*identifying contents of the packet exchanges; and generating the XML document using the contents of the packet exchanges*" (as from claim 1) to have essentially the same meaning as the language "*capturing data packets exchanged over a network communications line; generating an XML document using the captured data packets*"(as from claim 1) in the '456 patent. This claim language at issue is the only claimed subject matter for each of the independent claims of the instant application. As such, each of the independent claims of the instant application are anticipated by the '456 independent claims, and the nonstatutory obviousness-type double patenting rejection is appropriate.

5.   Claims 1, 6, 11 and 16 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/006,059 ('059). Although the conflicting claims are not identical, they are not patentably distinct from each other. The examiner interprets the claim language of the instant application regarding "*identifying contents of the packet exchanges; and generating the XML document using the contents of the packet exchanges*" (as from claim 1) to have essentially the same meaning as the language "*generating an XML document using network protocol data packets*"(as from claim 1) in the '059 application. This claim language at issue is the only claimed subject matter for each of the independent claims of the instant application. As such, each of the independent claims of the instant application are anticipated by the '059 application's

independent claims, and the nonstatutory obviousness-type double patenting rejection

is appropriate.

This is a <u>provisional</u> obviousness-type double patenting rejection because the

conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed
> publication in this or a foreign country, before the invention thereof by the applicant for a patent.

7.   Claims 1-4, 6-9, 11-14 and 16-19 are rejected under 35 U.S.C. 102(a) as being

anticipated by "Wide Area Network Packet Capture and Analysis" by Jon Meek (Meek).

8.   With respect to Claims 1, 6, 11 and 16, Meek teaches a method of (and

corresponding computer program, apparatus and computer system for) generating an

XML document to represent network protocol packet exchanges comprising the steps

of:

identifying contents of the packet exchanges (Page 256, 'Acquisition and

Analysis' and 'Acquisition Software' and see also Page 255 - 'The Hardware' in relation

to the memory device and processor); and

generating the XML document using the contents of the packet exchanges (Page

256 'Analysis Software').

9.   With respect to Claims 2, 7, 12 and 17, Meek teaches all the limitations of Claims

1, 6, 11 and 16 respectively, wherein the contents of the packet exchanges are used as

tagged elements of the XML document (Page 256 'Analysis Software' first paragraph -

Note, it is inherent that the XML document generated from the raw packet files would

have tagged elements corresponding to the contents of the raw packet files. XML

requires that all elements have start and end tags.)

10.   With respect to Claims 3, 8, 13, and 18, Meek teaches all the limitations of Claim

2, 7, 12 and 17 respectively, wherein the packet exchanges are fed through a program

to generate the XML document (Page 256 'Analysis Software' first paragraph - perl

program).

11.   With respect to Claims 4, 9, 14 and 19, Meek teaches all the limitations of Claim

3, 8, 13 and 18 respectively, wherein the XML document is generated based on the

network protocol in use (Page 256 'Analysis Software' particularly paragraphs 2-3).

Claim Rejections - 35 USC § 103

12.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

13.   Claims 5, 10, 15 and 20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Meek in view of U.S. Patent 6,920,607 by Ali et al. (Ali).

14.   With respect to Claim 5, 10, 15 and 20, Meek teaches all the limitations of Claim

4, 9, 14 and 19 respectively, but does not explicitly disclose the XML document is

validated using an XML schema. Ali teaches that XML Schemas are known in the art

and are used for validating XML documents (Col. 4 lines 44-64).

As such, It would have been obvious to one of ordinary skill in the art at the time

the invention was made to take the method disclosed by Meek and modify it as

indicated by Ali such that the method further comprises the XML document is validated

using an XML schema. One would be motivated to have this, as it is desirable to have

a valid and correct XML document (In Ali: Col. 4 lines 44-64).

Conclusion

15.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

16.   U.S. Patent 5,933,602 by Grover "System for selecting command packet and

corresponding response packet from communication stream of packets by monitoring

packets sent between nodes on network" August 3, 1999. Discloses selection and

display of command and response packets.

17.   U.S. Patent 6,931,574 by Coupal et al. "Systems and methods for interpreting

communications packets" August 16, 2005. Discloses a protocol analyzer capable of

displaying the contents of packets along with a meaningful description.

18.   U.S. Patent 6,954,789 by Dietz et al. "Method and apparatus for monitoring traffic

in a network" October 11, 2005. Discloses monitoring of packets including

parsing/extraction of the packets according to the corresponding protocol of the packet.

19.   U.S. Patent Application Publication 2003/0028662 by Rowley et al. "Method of

reconstructing network communications" February 6, 2003. Discloses packet capture

including saving request information from the packet as formatted data such as an XML

file.

20.   U.S. Patent Application Publication 2003/0088665 by Sauermann "Presentation

of network traffic as message sequence charts in network analyzers" May 8, 2003.

Discloses a visual display of packets that have been captured by the network analyzer.

        Any inquiry concerning this communication or earlier communications from the

examiner should be directed to David Lazaro whose telephone number is 571-272-

3986. The examiner can normally be reached on 8:30-5:00 M-F.
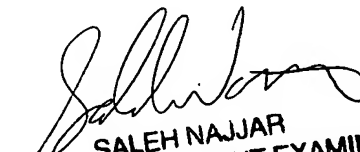
        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

David Lazaro
December 7, 2005

SALEH NAJJAR
SUPERVISORY PATENT EXAMINER